

# Staff Summary Report



**Council Meeting Date:** 10-16-08

**Agenda Item Number:** \_\_\_\_\_

**SUBJECT:** Approval of a Memorandum of Understanding between the City of Tempe, City of Mesa and Valley Metro Rail, Inc. (METRO) for the purpose of providing safety, security and fare enforcement for the METRO LRT system within the City of Tempe.

**DOCUMENT NAME:** 20081016pwjasm01 **TRANSPORTATION PLANNING (1101-01)**

**COMMENTS:** N/A

**PREPARED BY:** Jyme Sue McLaren, Deputy Public Works Manager – LRT Division (350-8803)

**REVIEWED BY:** Glenn Kephart, Public Works Manager (350-8205)

**APPROVED BY:** Glenn Kephart, Public Works Manager (350-8205)

**LEGAL REVIEW BY:** Bill Amato, Assistant City Attorney (350-8610)

**FISCAL NOTE:** Sufficient funds for future light rail private security have been budgeted in FY08/09 in cost center 3921.

**RECOMMENDATION:** Approve the Memorandum of Understanding between the City of Tempe, City of Mesa and Valley Metro Rail, Inc.

**ADDITIONAL INFO:** The Parties have previously executed a Light Rail Transit Operations Master Cooperative Funding Agreement, which includes provisions that outline local financial responsibility of METRO LRT operating costs for safety, security and fare enforcement.

**MEMORANDUM OF UNDERSTANDING AMONG  
THE CITY OF TEMPE, THE CITY OF MESA  
AND  
VALLEY METRO RAIL, INC.**

THIS AGREEMENT is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and among the City of Tempe, and the City of Mesa, municipal corporations duly organized and existing under the laws of the State of Arizona (hereinafter referred to as “Tempe” and “Mesa”) and Valley Metro Rail, Inc., a non-profit corporation, duly organized and existing under the laws of the State of Arizona (hereinafter referred to as “METRO”), collectively referred to as the “Parties.”

**RECITALS**

The Parties are authorized and empowered to enter into this Agreement pursuant to A.R.S. § 11-951-952 and A.R.S. § 40-1152 and the respective provisions of their City Charters or other governing authority; and,

The METRO light rail system (“METRO LRT system”) consists of twenty (20) miles of track and twenty-eight (28) stations through the Cities of Phoenix, Tempe and Mesa; and,

The Parties have executed Agreement No. 2008-47, Light Rail Transit Operations Master Cooperative Funding Agreement, which includes provisions establishing Tempe’s and Mesa’s responsibility to METRO for a share of costs, including costs of safety, security and fare enforcement for the METRO LRT system; and

A proof-of-payment fare collection system on the METRO LRT system will require security personnel to check passengers for valid fare media; and

There are three (3) Park-and-Ride lots with security kiosks serving the METRO LRT system in the cities of Tempe and Mesa located at:

- Apache/McClintock (Tempe)
- Apache/Price; and (Tempe)
- Main/Sycamore (Mesa)

The Park-and-Ride lots are considered critical infrastructure and create a need for security personnel to monitor the lots and the system to, among other things, maintain a secure environment, which includes deterring graffiti and vandalism; and,

The Parties have authorized METRO to staff the security positions using a private security contractor. The responsibility of the private security contractor shall be to provide security personnel who shall provide a secure environment for customers of the METRO LTR system, inspect fares, and staff security kiosks at Park-and-Ride lots, in accordance with this Agreement; and

METRO will issue a Request for Proposal to private security contractors; and,

METRO, in consultation with Tempe and Mesa, will select a qualified security contractor to provide the required services; and,

At the same time it enters into this Agreement, METRO and the City of Phoenix will enter into a separate agreement providing for security services on those segments of METRO LRT system located in the City of Phoenix; and,

Tempe and Mesa shall authorize the contracted security personnel to enforce all transit ordinances and issue transit complaints within their respective jurisdictions, and,

Tempe and Mesa will reimburse METRO for their pro rata security and cost of monitoring of the Park-and-Ride and security service; and

The cost for fare inspection will be a METRO operating expense and of no expense to Tempe and Mesa.

## **AGREEMENT**

The Parties therefore agree as follows:

### **SECTION 1. SCOPE OF WORK**

1. METRO will enter into a contract ("Security Contract") for security services with a qualified security company to provide security services on those segments of the METRO LRT system located within the Tempe and Mesa city limits at least ninety (90) days prior to the first day of operation of the METRO LTR system.
2. METRO shall ensure all security personnel are trained in accordance with the curriculum approved by the Security Steering Committee or other authorized entity.
3. The Security Contract shall provide that, among other things, trained security personnel will be positioned throughout the METRO LRT system within the Tempe and Mesa city limits, during all hours of operations and on a schedule mutually agreed upon by the Parties.
4. For fare inspection purposes, the METRO LRT system will be divided into sectors to guarantee that the costs for fare enforcement can be divided among the Parties;
5. Security personnel assigned fare inspection duties will perform the following functions within Tempe and Mesa city limits: maintain a secure environment by actively observing vehicles and on station platforms within the METRO LRT system, inspect passengers for valid fare media in accordance with established procedures, record fare inspection data using a handheld verifier, issue transit complaints for transit ordinance violations, provide customer assistance to METRO LRT passengers, assist METRO, Tempe and Mesa Police personnel at special events or incidents within the

METRO LRT system, notify the Security Steering Committee designee and METRO Operations Control Center by radio of emergency incidents and of any other incidents as identified by the Security Steering Committee.

6. Some security personnel will be assigned to inspect fares. Other security personnel will be assigned to provide a secure environment as described in the preceding paragraphs. If additional security personnel are needed to supplement the security personnel assigned to inspect fares, the security personnel may be so assigned for only the number of hours per day to achieve the desired inspection rate of twenty percent (20%) of METRO LRT system passengers. However, under no circumstances is the security of the environment within the METRO LRT system or its customers to be compromised.
7. Security personnel will enforce transit ordinances east of the Tempe/Phoenix city limits from 56<sup>th</sup> Street to the end of the METRO LRT system. While traveling west-bound security personnel shall not alight at 56<sup>th</sup> Street but will continue their trip west-bound to the 44<sup>th</sup> Street/Washington Station where they will alight and re-board an east-bound train. If a violation of the transit ordinances is committed in their presence while west-bound from 56<sup>th</sup> Street to 44<sup>th</sup> Street, they will notify the METRO Operations Control Center or other entity designated by the Security Steering Committee.
8. Security personnel will be stationed and assigned to the Apache/McClintock and at Apache/Price and at Main/Sycamore Park-and-Ride lots. Hours of coverage shall be established by mutual agreement of the Parties.
9. Security personnel assigned to Park-and-Ride lots will perform the following functions on the METRO LRT system within Tempe and

Mesa city limits: actively observe the Park-and-Ride lots within the METRO LRT system, be alert for suspicious activity, monitor closed circuit television (CCTV) monitors, escort METRO LRT passengers to their parked cars when possible, provide customer assistance to METRO LRT passengers, respond to emergency call box activations, notify the METRO Operations Control Center and a designee of the Security Steering Committee of emergency and other major incidents, and other functions as identified by the Security Steering Committee.

10. One security person and one supervisor will separately actively observe and secure the environment of the METRO LRT system for the entire portion of the METRO LRT system in the city limits of Tempe and Mesa by automobile. They will provide relief for the security personnel assigned to fare inspection and for the security personnel assigned to security duty in the Park and Ride lots in the city limits of Tempe and Mesa. They will also monitor the unstaffed Park-and-Ride lot at Apache/Dorsey, Tempe. They will maintain a presence to deter graffiti and vandalism, will report the details of automobiles left overnight in Park-and-Ride lots, will assist with special events, as required, and will assist METRO work crews as needed.
11. All security personnel will complete reports of security incidents (security report) that are criminal in nature at the end of each workday. A copy of the security report shall be forwarded electronically to the assistant chief of patrol operations for Tempe and for Mesa or his or her designee.
12. The security contractor will provide other services related to security and fare enforcement on and around those segments of

the METRO LRT system within the Tempe or Mesa city limits as directed by the Security Steering Committee.

**SECTION 1.A. Staffing**

Security staffing levels for fare inspection and for Park-and-Ride lot security will be based on hours necessary to provide security coverage during hours of METRO LRT system operation (currently anticipated to approximate twenty (20) hours per day), every day of each year that this Agreement remains in effect. The Security Steering Committee shall mutually agree on staffing levels for all services set forth in this Agreement.

As designated in the preceding paragraphs, one security person and one duty supervisor/security person will actively observe and monitor the METRO LRT system within the Cities of Tempe and Mesa, twenty-four hours a day, each day of the year between 56<sup>th</sup> Street and the Main/Sycamore Station. Vehicles for this purpose will be included in the security contract. Duties and responsibilities for security personnel will be cooperatively developed by the Parties through the Security Steering Committee.

A METRO approved reflective safety vest shall be worn by the security personnel when actively observing the Park-and-Ride lots and when the security personnel accesses the METRO right-of-way or adjacent streets.

**SECTION 1.B: Security Steering Committee**

The Parties agree to the formation of a Security Steering Committee that is responsible for establishing operational procedures and resolving security issues related to METRO LRT system within Tempe and Mesa. The voting members of the Security Steering Committee shall consist of one member from each of the Tempe and Mesa Police Department, selected by the respective Chiefs of Police and the Security Manager of METRO. The non-voting member shall be a senior management representative from the security company awarded the Security Contract.

### **SECTION 1.C. Reporting Responsibilities**

The security contractor shall assign a project manager to manage the contract with METRO. The project manager will confer with the Security Steering Committee on all matters of concern to METRO LRT and/or the Security Steering Committee. All non-criminal matters related to or arising from the operation of the METRO LRT system within the Tempe or Mesa city limits and pertaining to Transportation Security Administration and Federal Transit Administration security regulations, compliance, and standards are the responsibility of the METRO Director-Safety. All other law enforcement matters related to or arising from the operation of the METRO LRT system within Tempe or Mesa city limits remain the sole responsibility of the Police Department that has jurisdiction over the matter.

If an issue should present itself regarding a contracted security personnel's performance, the METRO Director-Safety, will immediately bring the issue to the attention of the security contractor project manager and the Security Steering Committee for action. In the event of a contracted security person's poor performance, METRO may request that a contracted security person be removed from the assignment upon request of the Security Steering Committee.

### **SECTION 1.D. Customer Service**

When assigning security personnel and supervisors to METRO LRT system for the duties set forth in this Agreement, the security contractor must, in addition to providing superior security services, consider and affirmatively address the necessity of creating a positive customer service relationship with METRO and the METRO LRT customer. The contractor will seek and consider feedback received from the Security Steering Committee, METRO stakeholders, employees, the Tempe and Mesa LRT liaison personnel and the general public.

If an issue should present itself regarding customer service, it shall and without delay, be brought to the attention of the Security Steering Committee for appropriate action.

The Security Steering Committee shall perform oversight and, as needed, report any concerns to the METRO Director-Safety.

**SECTION 1.E. Budget**

1. Cost for the security personnel assigned to fare inspection duties on those segments of the METRO LRT system in the Tempe or Mesa city limits will be funded through the METRO operating budget.
2. Tempe and Mesa will reimburse METRO a pro rata share for all costs associated with the security contract for staffing the Park-and-Ride Lots located in the Tempe and Mesa city limits.
3. Tempe will reimburse METRO for eighty-one percent (81%) of all costs associated with staffing the mobile security-monitoring portion of the security contract, including costs associated with a vehicle for mobile security monitoring use and supervisor costs. The remaining nineteen percent (19%) of all mobile security monitoring staffing costs will be paid by Mesa for mobile security monitoring on those segments of METRO LRT within Mesa city limits.
4. METRO will receive detailed invoices from the security contractor and pay the security contractor with funds received from Tempe and Mesa.
5. Unbudgeted items, including unbudgeted overtime related to or arising from mobile security monitoring in and around the METRO LRT system within Tempe or Mesa's city limits or involving their employees, are not authorized without Mesa or Tempe's prior written approval.

- a. It is agreed that additional personnel costs necessitated by a local, state or national emergency, unanticipated security threats, elevated threat levels, Transportation Security Administration or Federal Transit Administration requirements, or special events expected to produce large crowds will be addressed by the Parties as the need arises.
  - i. These costs will be in addition to the agreed upon yearly budget.
  - ii. Whenever possible, these costs shall be reviewed by the Security Steering Committee and the METRO Board of Directors prior to the occurrence.

**Section 1.F. Technology and Support**

Security personnel shall be issued appropriate equipment (chemical spray, radio, flashlight and electronic citation device) approved by METRO and the Security Steering Committee for use on this assignment.

METRO will provide all on-duty security personnel and supervisors with portable radios which are capable of communicating with the Operations Control Center.

**SECTION 2. EFFECTIVE DATE; TERM OF AGREEMENT**

This Agreement shall commence on the "Effective Date" defined as the date filed with the Secretary of State. Unless terminated sooner pursuant to its terms, the Agreement, shall continue through June 30, 2010.

**SECTION 3. AGREEMENT NON-ASSIGNABLE**

METRO may not assign or otherwise transfer any of its rights or obligations hereunder to a third party without the express prior written consent of

Tempe and Mesa, which may be granted or withheld by the Cities in their sole and absolute discretion. Any assignment or transfer without such prior written consent shall be void.

#### **SECTION 4. INDEMNIFICATION**

Except for claims allegedly arising solely and exclusively from the negligent or willful acts or omissions of Tempe and/or Mesa, their personnel, officials, agents or employees (referred to in this Section 4 as "Indemnitee"), including that which is set forth in Section 22, METRO shall indemnify, defend, save and hold the Indemnitee harmless from and against any and all claims, actions, liabilities, damages, losses, expenses and costs (including court costs, attorneys' fees and costs of claim processing, primary loss investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), loss or damage to tangible property and economic or financial loss of any character or any nature: (1) arising under this Agreement, or (2) caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of METRO or any of its owners, personnel, directors, agents, contractors or employees, including employees from Tempe or Mesa assigned to work full time for METRO.

It is the specific intent of the Parties to this contract that the Indemnitee shall, in all instances except for loss or damage resulting from the sole and exclusive negligence of the Indemnitee, be indemnified against all liability, loss or damage of any nature whatever for or on account of any injuries to or death of person or damages to or destruction of property belonging to any person, or economic or financial losses arising out of or in any way connected with the performance of this Agreement.

It is further agreed that METRO will be responsible for primary loss investigation, defense and judgment costs.

Nothing in this Agreement shall preclude the City of Tempe and/or the City of Mesa from conducting their own investigation.

Irrespective of what entity conducts the investigation, the parties agree to fully cooperate with each other in any and all investigations.

## **SECTION 5.           DEFAULT**

A Party shall be deemed in default under this Agreement upon failure of such Party to observe or perform any material covenant, condition or agreement on its part to be observed or performed hereunder, and the continuance of such failure for a period of thirty (30) days after written notice by the other Party, as required herein. Such notice shall specify the failure and request it be remedied, unless the Party giving notice agrees in writing to an extension of the time period prior to its expiration. However, if the failure stated in the notice cannot be corrected within the applicable period, it will not give rise to a default hereunder if corrective action is instituted within the applicable period and diligently pursued until the failure is corrected. In the event of a default hereunder, the non-defaulting Party may have a breach of contract claim and remedy against the other in addition to any remedy provided or permitted by law or equity, provided, however, that no remedy that would have the affect of amending any provisions of this Agreement shall become effective without the formal amendment of this Agreement.

## **SECTION 6.           ISSUE RESOLUTION**

Any dispute arising out of the interpretation of any provision of this Agreement, any policy matter or the determination of an issue of fact related to security, which dispute is not resolved at staff level, shall be referred to the Security Steering Committee. If, good faith negotiations aimed at reaching an amicable solution are unsuccessful, the dispute shall be presented to the METRO Board of Directors for resolution through good faith negotiations. If not resolved at this level, the dispute may be brought before the appropriate state court located in Maricopa County, Arizona.

**SECTION 7.           AUDIT**

All books, accounts, reports, files and other records relating to this Agreement under the custody or control of METRO shall be available for, at all reasonable times, inspection and audit by Tempe or Mesa for five (5) years after completion of this Agreement. Such records shall be produced at METRO offices upon written request by another party.

**SECTION 8.           NOTICE**

Any notice, consent or other communication ("Notice") required or permitted under this Agreement shall be in writing and either delivered in person, sent by facsimile transmission, deposited in the United States mail, postage paid, registered or certified mail, return receipt requested, or deposited with any commercial air courier or express service addresses as follows:

If intended for METRO:

Valley Metro Rail, Inc. (METRO)  
101 N. First Avenue, Suite 1300  
Phoenix, AZ 85003  
Attention: General Counsel  
Fax: (602) 271-9361  
Attention: Director of Finance and Administration  
Fax: (602) 271-9361

If intended for Tempe:

Police Chief  
City of Tempe Police Department  
120 E. Fifth Street  
Tempe, AZ 85281  
T: (480) 350-8306  
F: (480) 350-8337

If intended for Mesa:

Assistant Chief  
Office of Operations  
City of Mesa Police Department  
130 North Robson  
Mesa, Arizona 85201-6697  
T: (480) 644-2441  
F: (480) 644-4994

Notice shall be deemed received at the time it is personally served or, on the day it is sent by facsimile transmission, on the second day after its deposit with any commercial air courier or express service, if mailed, ten (10) days after the notice is deposited in the United States mail as provided. Any time period stated in a Notice shall be computed from the time the Notice is deemed received. Either party may change its mailing address, facsimile number or the person to receive notice by notifying the other party as set forth in this Agreement.

Notice sent by facsimile transmission shall also be sent by regular mail to the recipient at the above address. The requirement for duplicate notice is not intended to change the effective date of the Notice sent by facsimile transmission.

#### **SECTION 9. NON-APPROPRIATION**

METRO recognizes that the continuation of this Agreement after the close of Tempe's or Mesa's fiscal year, which ends on June 30 of each year, is subject to the approval of the respective city councils providing an appropriation covering this item as expenditure. The Parties do not represent that such budget item will be adopted by the relevant Council. In the event of non-appropriation, Tempe or Mesa may terminate this Agreement without further obligation or penalty on the last day of the fiscal period for which funds are legally available.

#### **SECTION 10. AMENDMENT/ TERMINATION**

Modification of this Agreement may be made at any time with the agreement of all Parties, provided that the modification is in writing signed by all Parties. Because this agreement concerns security services, the Security Steering Committee shall be consulted prior to modifications to this agreement.

**SECTION 11. NON-WAIVER**

No covenant or condition of this Agreement may be waived by any Party, unless done so in writing. Forbearance or indulgence by any Party in any regard whatsoever shall not constitute a waiver of the covenants or conditions to be performed by the others.

**SECTION 12. SEVERABILITY**

Any provision of this Agreement that is prohibited or unenforceable under the laws of the State of Arizona shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof.

**SECTION 13. BENEFIT AND BINDING EFFECT**

The terms and provisions of this Agreement shall inure to the benefit of and be binding on METRO, Tempe and Mesa, and their respective successors and permitted assigns.

**SECTION 14. SURVIVAL**

The indemnifications and limitations on liability provided in this Agreement shall have full force and effect notwithstanding any other provisions of this Agreement and shall survive any termination or expiration thereof.

**SECTION 15. FURTHER ASSURANCES**

The Parties shall execute such other documents and take such other actions as may be reasonably necessary or proper to achieve the intent and purposes set forth in this Agreement.

**SECTION 16. CONFLICTS OF INTEREST**

All Parties hereto acknowledge that this Agreement is subject to cancellation by Tempe or Mesa pursuant to the provisions of Section 38-511, Arizona Revised Statutes.

**SECTION 17. ENTIRE AGREEMENT**

This Agreement together with the exhibits, instruments and other documents required to be executed and delivered in connection herewith, supersedes all prior agreements and understandings of the Parties with regard to the subject matter hereof and constitutes the entire Agreement between the parties.

**SECTION 18. CONSTRUCTION AND INTERPRETATION OF AGREEMENT**

This Agreement and each of its provisions, exhibits, terms and conditions, has been reached through negotiations between the Parties. Accordingly, this Agreement shall not be deemed to have been authored, prepared or drafted by any particular Party, and that the rule of construction that resolves ambiguities against the drafting party shall not be employed in the interpretation of this Agreement.

**SECTION 19. THIRD-PARTY BENEFICIARIES**

This Agreement is intended to benefit the corporate and municipal interests of METRO, Tempe and Mesa alone, and no other person shall claim any implied right, benefit or interest in such services. The Parties intend not to create rights in, or remedies to, any third party as a beneficiary of this Agreement or of any duty, covenant, obligation or undertaking established under this Agreement.

**SECTION 20. POLICE POWER**

The Parties acknowledge the right vested in the Tempe or Mesa pursuant to general, municipal law to exercise its police power for the protection of the health, safety and welfare of its constituents and their properties. Nothing in this Agreement shall be construed as precluding Tempe or Mesa from exercising such powers in connection with the subject matter discussed herein.

## **SECTION 21. NONDISCRIMINATION**

The Parties to this Agreement shall comply with all applicable provisions of state and federal non-discrimination laws and regulations including, but not limited to, State Executive Order No. 99-A, which mandates that all persons, regardless of race, religion, sex, age, national origin or political affiliation shall have equal access to employment opportunities and all other federal and state employment and educational opportunity laws, rules and regulations, including the Americans with Disabilities Act. No Party shall engage in any form of illegal discrimination with respect to applications for employment.

In this context, the following language is required to appear:

*METRO shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, gender, national origin or age or disability, nor otherwise commit an unfair employment practice. METRO will ensure that employees are dealt with during employment without regard to their race, color, religion, gender or national origin. METRO further agrees that this clause will be incorporated into all subcontracts entered into with suppliers of materials or services, in connection with this Agreement. This clause shall also be incorporated in all job-consultant agreements or subleases in any way pertaining to METRO's performance under this Agreement.*

The Parties have each executed this Agreement as of the date first set forth above.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

CITY OF TEMPE, a municipal corporation  
Charlie Meyer, City Manager

By \_\_\_\_\_  
Charlie Meyer, City Manager

CITY OF TEMPE POLICE DEPARTMENT,

By: \_\_\_\_\_  
Tom Ryff  
Chief of Police

Attest: \_\_\_\_\_  
City Clerk

Approved as to Form:

\_\_\_\_\_  
Tempe City Attorney

CITY OF MESA, a municipal corporation  
Christopher Brady, City Manager,

By \_\_\_\_\_  
Christopher Brady, City Manager

CITY OF MESA POLICE DEPARTMENT,

By: \_\_\_\_\_  
George Gascón  
Chief of Police

Approved as to Form:

By: \_\_\_\_\_  
Debbie Spinner, City Attorney

VALLEY METRO RAIL, INC.

By: \_\_\_\_\_  
Richard J. Simonetta  
Chief Executive Personnel

Approved as to form:

By: \_\_\_\_\_  
Michael J. Ladino  
General Counsel